COURT NO. 3

Criminal Misc. Application No. 52 of 2003

Sri Shamir Chandra ……..….. Applicant

Versus

State of Uttaranchal and
Another ……Respondents.

Hon'ble Irshad Hussain, J.

This is a petition under section 482 of the Code of Criminal Procedure for quashing the orders dated 21.11.2001 passed by the Judicial Magistrate, Nainital as well as the judgment and order dated 04.02.2002 passed by the Session Judge, Nainital.

It appears that in the complaint case under section 138 of the Negotiable Instrument Act, the date was fixed for recording of evidence of the complainant under section 244 of the Code and on that date applicant for adjournment was moved. The application was rejected on the ground that on earlier occasions opportunity was given and that the complainant was deliberately delaying the trial of the case. The complainant had taken the ground that he was ill and was getting treatment in Delhi. Learned Sessions Judge was of the view that there was no impropriety in the impugned order passed by the learned Judicial Magistrate and went on to dismiss the revision summarily.

I heard the learned counsel fore the petitioner and having perused the papers filed in support of the petition, mainly the prescriptions and the documents relating to the treatment of heart ailment which the complainant was getting in Delhi, it can, safely be

said that the complianant had cogent cause to seek adjournment on that date. In the interest of justice, one more opportunity could have been given by the learned trial court to produce the evidence. Since that was not done, the order suffers from vice of impropriety and therefore, the same deserves to be set aside.

In view of above the petition is allowed and the orders dated 21.11.2001 and 04.02.2002 (contained in annexures III and IV respectably) are hereby set aside. The learned C.J.M. shall afford another opportunity to the complainant to adduce his remaining evidence in the complaint case and thereafter proceed to conclude the trial in accordance with law.

(Irshad Hussain, J.)

28.03.2003